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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 30/2017 & CM Nos.1092-1093/2017

M/S ROHINI TRADERS Petitioner
Through Mr.Dilip Singh, Advocate

versus

M/S J K LAKSHMI CEMENT LTD Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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11.01.2017

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 18.10.2016 by which an application filed by the respondent under Order VI Rule 17 CPC for amendment of the written statement was allowed.
2. The petitioner has filed the suit for recovery of Rs.12,05,231/-. The suit was decreed. Against the decree the respondents filed an RFA before this Court. A Division Bench of this court by order dated 7.11.2008 allowed the appeal of the respondent and remanded the matter back to the trial court. The proceedings were to be conducted by recalling Shri R.K.Gupta, DW-1 for cross-examination who was to produce the documents which he had produced on 10.11.2006. He was to be re-cross-examined with respect to documents produced by him and the document was to be brought on record as directed by the Division Bench. The trial court was directed to re-decide the suit without being influenced by any observations made in the impugned

judgment or any observations made by the Division Bench in appeal. It is stated that the petitioners had filed a Special Leave Petition before the Supreme Court which was dismissed in 2015.

3. By the present application under Order VI Rule 17 CPC the defendant seeks to amend the written statement seeking a judgment and decree for Rs.4,62,000/- or any other sum found due be passed in favour of the respondent. The trial court by the impugned order permitted the amendment holding that the same could be treated as a plea in the nature of equitable set-off. Accordingly, an additional issue in this regard was framed. However, it was clarified that neither of the parties would have a right to re-open the case at any stage other than as remanded by the Division Bench of this Court. Hence, on the same evidence on record other than the evidence to be added as directed by the Division Bench, the trial court had directed that the said additional issue would be adjudicated upon.

4. Learned counsel appearing for the petitioner has argued that the respondents are needlessly delaying the matter by filing one application after the other. He submits that the Division Bench had given four weeks' time to the trial court to complete the entire procedure as directed. He submits that despite this direction the suit is making no progress and the respondents are repeatedly taking adjournments.

5. In my opinion, an additional issue has been framed is to be adjudicated upon only based on evidence already on record or evidence to be added as per directions of the Division Bench. As no fresh evidence is being permitted on account of the additional issue, no prejudice is caused to the petitioner. The petitioner shall be at liberty to raise all issues on merits at the time of final adjudication of the suit before the trial court. Accordingly,

there is no infirmity in the impugned order which would warrant interference by this court.

6. The trial court is requested to bear in mind the directions of the Division Bench to conclude the matter within four weeks. Accordingly, the trial court may dispose of the matter within four weeks from today giving no adjournment to any party.

7. Petition stands dismissed with the above observations. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

JANUARY 11, 2017

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